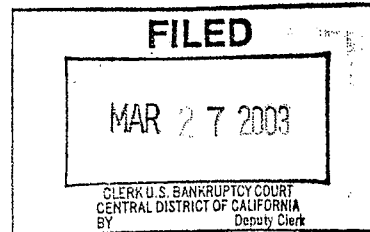


FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

In re:

J. HOWARD MARSHALL
et ux.

Debtors.

Case No. LA 02-30769 SB

CHAPTER 11

**AMENDED OPINION
ON RECUSAL
AND REASSIGNMENT**

DATE: October 29, 2003
TIME: 11:00 A.M.
CTRM.: 1575 (Roybal)

I. INTRODUCTION

Pierce Marshall ("Pierce") brings this motion for reassignment or recusal as to this entire bankruptcy case, which was filed voluntarily by his brother J. Howard Marshall ("Howard") and his wife.¹ The court denies both branches of the motion.

II. RELEVANT FACTS

Howard and his wife Ilene filed this voluntary chapter 11 bankruptcy case on July 23, 2002. They scheduled Pierce as a disputed creditor in the amount of \$12 million. This debt resulted from a monetary judgment that Pierce obtained against Howard in the Texas probate case for their father J. Howard Marshall II ("J. Howard"). Howard suffered this judgment after he unsuccessfully contested Pierce's receiving all of their father's assets pursuant to the applicable will and family trust.

Pierce appeared in this court in the well-publicized chapter 11 case filed by their late father's third wife Vickie Marshall ("Vickie"). In an adversary proceeding in that case, this court awarded summary judgment against Pierce on his claim against Vickie's estate for defamation. The court also awarded judgment in Vickie's favor after trial in the amount of \$449,754,134 plus punitive damages of \$25 million. This judgment was based on Vickie's claim that Pierce tortiously interfered with her expectancy of a gift from her late husband. See *Marshall v. Marshall (In re Marshall)*, 253 B.R. 550 (Bankr. C.D. Cal. 2000). On trial *de novo*, the district court increased the punitive damages to \$44.3 million and remeasured the compensatory damages at \$44.3 million. See *Marshall v. Marshall (In re Marshall)*, 275 B.R. 5 (C.D. Cal. 2002).

In that adversary proceeding, this court sanctioned Pierce for destroying records subject to pending discovery requests, refusing to provide discovery and disobeying discovery orders. The

¹Pierce brings this motion in his capacity as trustee for the Bettye B. Marshall Living Trust, J. Howard Marshall, II Marital Trust Number Two, and E. Pierce Marshall Family Trust ("the trusts").

final judgment as to liability was based in part on Pierce's refusal to provide discovery. In the trial *de novo* in the district court, Pierce produced the documents at issue. After trial, the district court found:

The level of misconduct is far worse than even the bankruptcy court, which awarded \$25 million in punitive damages, believed was present. . . . Only because the Court recognizes that the amount of punitive damages must have a rational nexus to the actual damages award does the Court limit the total award to a doubling of the actual damages.

Id. at 58. That decision is now on appeal to the Ninth Circuit.

III. Standing

This motion was brought and argued before the deadline for filing claims in this chapter 11 case. The court assumed at that time that Pierce would file a claim, and that his claim would be one of the largest in this case. Indeed, it was his \$12 million judgment that precipitated this bankruptcy filing.

However, Pierce declined to file a claim in this case. Before deciding the pending motion on these grounds, however, the court decided that it would benefit from briefing and argument of counsel on this point.² In consequence, the court issued an order to show cause why the pending motion should not be denied on these grounds, because the refusal to file a claim substantially circumscribes the standing of a creditor in a bankruptcy case.

The court finds that Pierce did have standing to make this motion, because, when he

²Pierce objects to the court's issuance of an order to show cause to address this issue. Apparently he thinks that the court should have decided it without the benefit of briefing by counsel. The court disagrees. Further, the outcome of the show cause hearing itself shows the wisdom of the court's decision to have counsel brief this issue.

1 made the motion, he was a creditor listed on the
2 debtors' schedules, and the deadline for filing a
3 claim had not yet arrived. The court assumes
4 without deciding that Pierce continues to have
5 standing as to this issue, notwithstanding his
6 failure to file a claim. The order to show cause is
7 discharged.

8 IV. REASSIGNMENT

9 There is no doubt that this case is related
10 to the Vickie Lynn Marshall case. Both cases
11 arose out of the disposition of the assets of J.
12 Howard II, the father of Pierce and Howard and the
13 husband of Vickie. Vickie filed her chapter 11
14 case because she had not received any assets
15 from her husband's estate to support her
16 expensive living style, and her own income was
17 insufficient. After Pierce filed a claim in her case,
18 she filed a counterclaim which resulted in the
19 outstanding district court judgment for \$88.6
20 million (half of which is punitive damages).
21 Howard moved to intervene in that litigation, but
22 the motion was denied in favor of having that
23 dispute resolved in the Texas probate case.

24 Howard contested the J. Howard II
25 probate case in Texas, and lost an attorney's fee
26 award to Pierce in an amount now exceeding \$12
27 million. Pierce has received all of the J. Howard II
28 inheritance, which now is probably worth more
than \$2 billion, and is trying to protect this
inheritance. Were it not for this complex
relationship among the Marshalls, and the prior
litigation in Vickie's case in this court, this motion
for recusal or reassignment would never have
been made.

Neither Bankruptcy Rule 1015(b)³ nor

Local Rule 1015-2⁴ exhausts the ways in which
cases can be related. Each of these rules lists
some of the more common ways that the business
relations of two or more entities may be sufficiently
connected to have specific consequences. Rule
1015(b) authorizes the administrative consolidation
of certain related entities. Local Rule 1015-2
requires the disclosure of certain related cases,
but makes no provision as to the consequences
resulting from the disclosure.

A court has broad discretion in interpreting
and applying its local rules and general orders
regarding assignment of cases. *United States v.*
DeLuca, 692 F.2d 1277, 1281 (9th Cir. 1988). A
federal court's general order for assignment "is a
housekeeping rule for the internal operation of the
... court which has a large measure of discretion

If a joint petition or two or more petitions
are pending in the same court by or
against (1) a husband and wife, or (2) a
partnership and one or more of its
general partners, or (3) two or more
general partners, or (4) a debtor and an
affiliate, the court may order a joint
administration of the estates.

⁴Local Rule 1015-2(a) provides:

Cases shall be deemed "related cases"
for the purposes of this Local
Bankruptcy Rule if the earlier case was
pending at any time within 6 years
before the filing of the new petition, and
the debtors in such cases:

- (1) Are the same;
- (2) Are spouses or ex-spouses;
- (3) Are "affiliates," as defined in 11
U.S.C. § 101(2), except that § 101(2)(B)
shall not apply;
- (4) Are general partners in the same
partnership;
- (5) Are a partnership and one or more of
its general partners;
- (6) Are partnerships that share one or
more common general partners; or
- (7) Have, or within 180 days of the
commencement of either of the related
cases had, an interest in property that
was or is included in the property of
another estate under 11 U.S.C. §
541(a).

³Rule 1015(b) provides in relevant part:

1 in interpreting and applying it." *United States v.*
2 *Torbert*, 496 F.2d 154, 157 (9th Cir. 1974).

3 In this court, a judge is assigned to a case
4 at the moment that the case is filed. A chapter 11
5 case⁵ is assigned in random fashion to a judge in
6 the division where the case is filed, unless the
7 case is related to another case. Where a related
8 case has been assigned to a judge still sitting in a
9 division of the court, the new case is typically
10 assigned to the same judge.

11 Thus, there are two routes by which I may
12 have been assigned this case.⁶ First, I may have
13 received it pursuant to the random selection
14 process, the "luck of the draw." Second, the
15 clerk's office may have decided that this case is
16 related to the Vickie case.

17 If the clerk's office assigned the case to
18 this court because it was related to the Vickie
19 case, that assignment was entirely proper. The
20 purpose of assigning related cases to the same
21 judge is to promote judicial efficiency and to avoid
22 the necessity of a new judge learning a complex
23 factual scenario from the beginning. That goal is
24 certainly promoted in this case. As movant's own
25 brief states on the very first page: "[T]his court is
26 familiar with the parties, and with the probate
27 proceedings from which the trusts' claim against
28 Howard arises"

29 The facts in these related cases are
30 extremely complex. The record in the Vickie case
31 is one of the largest in the history of this court.
32 The district court took some 42 pages just to state
33 the relevant facts in its opinion on its *de novo*
34 review of this court's decision in the Vickie case.
35 See 275 F.3d at 8-50. If ever there were
36 compelling grounds for finding that cases are
37 related, such grounds exist in these cases.

38 V. RECUSAL

39 As an alternative to reassignment, Pierce
40 moves this court to recuse itself from this case. In

41 ⁵In the past, but not at the present time,
42 chapter 13 cases filed in the Los Angeles
43 division have been assigned by a different
44 system.

45 ⁶I first learned of this case was assigned
46 to me when I received a copy of the petition
47 several days after the filing.

support of allegations of bias, Pierce cites the
court's adverse rulings in Vickie's case, comments
from the bench during a trial in that case, and
articles in the press.

The governing statute on recusal states in
pertinent part: "Any justice, judge, or magistrate of
the United States shall disqualify himself in any
proceeding in which his impartiality might
reasonably be questioned." 28 U.S.C. § 455
(a)(2003). The standard for determining whether
a judge should recuse himself or herself under this
section is, "[W]hether a reasonable person with
knowledge of all the facts would conclude that the
judge's impartiality might be reasonably
questioned." *United States v. Hernandez*, 109
F.3d 1450, 1453 (1997). While the law no longer
requires extra-judicial sources of bias to warrant
recusal, the standard for recusal based solely on
judicial conduct is extremely high, and is found
only in the "rarest of circumstances." *Liteky v.*
United States, 510 U.S. 540, 551 (1994). It must
be "so extreme as to display a clear inability to
render a fair judgment." *Id.*

Movant's reading of case law errs in
applying the standard for recusal. Courts have
been rightfully reluctant to permit litigants to claim
that judicial conduct itself appears improper,
absent behavior so extreme as to be considered
unjudicial. It is settled law that adverse judicial
rulings alone do not constitute a valid basis for
recusal based on alleged bias or partiality. See,
e.g., *Liteky* at 556; *Mayes v. Leipziger*, 729 F.2d
605, 607 (9th Cir. 1984); *United States v. Nelson*,
718 F.2d 315, 321 (9th Cir. 1983) (a judge who had
accepted an invalid guilty verdict in the first trial
need not recuse himself from the second); see
also *United States v. Studley* 783 F.2d 934, 939-
40 (9th Cir. 1985) (recusal not warranted where a
litigant had filed a lawsuit against the judge and
engaged in leafleting activities against him).

The *Liteky* court also held that judicial
remarks that are critical, disapproving of, or even
hostile to counsel do not ordinarily support a bias
or partiality challenge. It is expected that a judge
will form opinions during the trial, and may become
"exceedingly ill disposed towards the defendant
who has been shown to be a thoroughly
reprehensible person." Even "expressions of
impatience, dissatisfaction, annoyance, and even
anger" are emphatically not grounds for recusal.
Liteky at 555-556.

Here, the adverse judgment in the

1 adversary proceeding in the Vickie case does not
2 create a basis for recusal. Neither the magnitude
of the award nor the inclusion of punitive damages
warrants recusal.

3 Principally Pierce's recusal motion relies
4 on the discovery sanctions that this court imposed
on him in the Vickie case. He does not deny that
5 he refused to produce the documents that gave
rise to those sanctions. Indeed, in preparation for
6 the trial *de novo* in the district court, he produced
"several hundred" boxes of additional documents.
See 275 B.R. at 10. His remedy for these
7 sanctions lies in the appellate courts, where that
case is now pending. In this case he starts with a
8 clean slate as to discovery (if any arises with
respect to him).

9 In addition, Pierce calls particular attention
to two remarks by the court in the Vickie case: (1)
10 characterizing the defendant as having "extremely
dirty hands," and (2) stating that Pierce's
11 attorneys were making the litigation "look like
World War III." The first comment occurs in the
12 court's findings of fact upon which it denied a stay
pending appeal. Findings of fact, based on the
13 record before the court, are simply not grounds for
recusal. Second, the reference to "World War III"
14 was first made by Pierce's own counsel and
merely repeated by the court. These comments
15 do not approach the high degree of antagonism
that would make fair judgment impossible.

16 Movant also provides several newspaper
and magazine articles which supposedly
17 characterize this court as hostile to his claims.
The characterizations of newspaper articles and
18 journalists are not grounds for recusal.

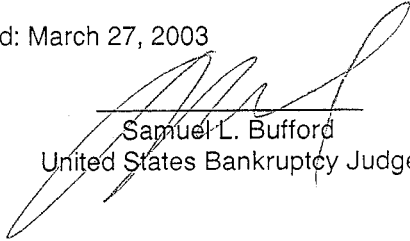
19 Finally, the issue of recusal is
circumscribed by the limited appearance that
20 Pierce will likely make in this case. Pierce has
filed no proof of claim, and acknowledges that he
21 will receive no distribution under any
reorganization plan that this court might approve.
22 Thus, there is little likelihood of any live testimony
from him in this case.

23 The court finds that Pierce's motion for
recusal, which is based entirely on this court's prior
judicial conduct, does not present the "rarest of
24 circumstances" where recusal is appropriate.

V. CONCLUSION

The court concludes that grounds for
recusal or reassignment of this case have not
been shown. The motion is denied in all respects.

Dated: March 27, 2003


Samuel L. Bufford
United States Bankruptcy Judge